MEMORANDUM

To:	The United States Department of State: Bureau of Consular Affairs
From:	Mary Joan McNamara, MA, JD
RE:	Intercountry Adoption Project: Insurance for Adoption Service Providers: Costs and Limits of Liability
Date:	May 2, 2005: Updated, Final Report (With editorial/technical corrections as of September 27, 2005)

I. The Task Defined

A. Prologue

Section 203(E) of the Intercountry Adoption Act ("IAA") provides: "The agency [ASPs] [sic] agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate."

In order for the Department of State to meet its Congressional mandate contained in Public Law 106-279 to promulgate a regulation for an 'adequate' amount of professional liability insurance for accredited Adoption Service Providers ("ASPs"), two basic questions frame the Department of State's task:

1. What constitutes an adequate amount of insurance that accredited service providers should obtain, that is the "limits of liability" for insurance coverage that would meet the Congressional standard?

2. Considering the cost of insurance and the financial impacts of the potential costs of insurance on provider agency budgets, what is available in the marketplace?

These two questions for which we have been seeking answers, raise a third, subsidiary question:

> 3. Is there anecdotal information available in the form of settlements and/or reported jury verdicts, and in the form of claims information from insurers, which would provide an empirical basis for establishing what would be considered to be reasonable "liability limits" or an "adequate" amount of professional liability insurance?

To address these questions, a methodology was devised to obtain information from a variety of sources simultaneously, countrywide. Information was sought from offices of state government regulators as well as from private industry.

Because the insurance market is so complex with so many different insurers offering different product lines, and because information about the markets, which is available to ASP's is fragmented at best, our starting point was to commence research to establish which insurers are writing the professional liability insurance that would be available to ASPs.

This task was somewhat aided by ASPs who provided comments to the Department of State's proposed rule with respect to insurance which was published in Part 2 of the ***Federal Register*** on September 15, 2003. The proposed rule was open for a 90-day public comment period that began on September 15, 2003 and ended on December 15, 2003.

Certain ASP commenters raised concerns about the cost and availability to them of insurance. For example, in October-November 2003, the Joint Council on International Children's Services conducted a survey of certain of their members in order to obtain information on premiums being paid for insurance. I have reviewed those results, which are contained in the Department's public records. All public comment are published on the Department's website at http://travel.state.gov.

The experience of the ASPs who commented is seemingly validated by more general information provided by brokers and agents. As is explained in more detail below, ASPs operate in what many insurers perceive to be a 'high risk' business. To many underwriters who evaluate the risks and perform the cost/benefit analysis that is inherent in the underwriting or pricing of any type of insurance, the international adoption services market spans both domestic and foreign considerations. Underwriters evaluate the potential 'exposures' that come from placing children from one culture into another culture with all the potential risks that range from not knowing a child's medical background to whether a given adoption agency has a well-established protocol. Insurers consider these issues and many more, as is explained below.

After considering the various types of insurance, which typically might comprise a plan of coverage for a well-protected ASP, the focus of this task became one of seeking information with respect to "Errors & Omissions" ("E & O") or professional liability insurance because of the IAA requirement that the Department identify an adequate amount of professional liability insurance. As is explained in more detail below, Errors & Omissions or professional liability insurance is the type of insurance which is typically purchased to cover the negligence which might occur in the adoption process, either from activities or conduct which were wrongfully/negligently performed or from activities or conduct which were omitted and should have been performed. There are many types of "errors or omissions" which might lead to professional liability claims or lawsuits in the adoption process. These might include claims that an ASP failed to reveal the complete medical or developmental history of the child, or that appropriate services which meet the legal standard of care allegedly were not provided during the adoption process. The potential types of claims are addressed in another section of this report.

Once preliminary information about brokers and agents who sell or place professional liability insurance for ASPs was obtained, we narrowed lists to identify only insurers and agents and brokers who typically place professional liability insurers for ASPs. A partial list of sources from which information has been identified and/or sought is attached in Appendices to this Memorandum. See Appendix I, which is a list of brokers/agents or wholesalers who were identified and/or who were contacted for information, or about whom information was sought. Appendix II is a list of insurance companies or 'families' of insurance companies, primarily in the surplus lines market who have been identified (rightly or wrongly) as providing professional liability insurance and/or who have been contacted.

B. Updated Information As Of April 28, 2005

As we developed more comprehensive information, we learned that the number of insurers who are writing professional liability insurance for ASPs was much smaller than the list in Appendix II. It is our understanding that there may be no more than ten (10) or so insurers in this country, excluding Lloyd's of London ("Lloyd's"), who write professional liability insurance for social services/adoption agencies. It is our understanding, at least according to one estimate, that as recently as two or three years ago there were fewer than that number. In sum, we came to understand that the insurance market for social services/adoption providers is a very tight, difficult market. Repeatedly, we heard that there are concerns about sexual molestation and abuse claims which influence pricing. From an international standpoint, many claims result from adoptive parents' dissatisfaction with the health or development of the children they adopt. Consequently, to a certain extent, the assessments we reached were clearly dictated by the market and market perceptions. Also provided in this report is a brief explanation of the type of information sought and why the information was sought. A basic description of the insurance market is provided which may place the scope of this task in context.

It is our evaluation that a recommendation ***per se*** of what "adequate" professional liability insurance would be is not warranted at this time given the limited quantifiable information that was made available. It is, however, our assessment from the many observations provided by brokers and agents, by wholesalers, and by insurers, that the typical coverage limits for professional liability insurance for ASPs is $1 million, and more typically, limits of $1million per claim/occurrence and $3 million in the aggregate, or coverage limits typically written as $1m/$3m. A minimum level of coverage that may be necessary and appropriate, if not adequate, given information provided to us, is $1 million in the aggregate. The simple way to express this is that $1 million in the aggregate of professional liability insurance seems prudent. If this standard is accepted, the correct way to state this is: "The Agency or person must maintain professional liability insurance in an amount reasonably related to its exposure to risk but in an amount not less than $1 million of insurance in the aggregate."

It is not clear whether the outer limit of $3 million typically available in the market includes comprehensive general liability insurance in the same policy. Many of the policies for this class of insurance are not "stand alone," that is, they are not provided solely for adoption services coverage. Many professional liability policies are issued to social services agencies that provide services other than adoption services, and these other services are "rated" for insurance purposes as part of the professional liability portion.

Many of our informants suggested that if more coverage than $3 million is available from insurers and an agency can afford additional coverage, it might be prudent to purchase such additional coverage. However, we were advised that a coverage amount in excess of $3 million in primary insurance is offered by few of the insurers even writing this business for reasons at least in part related to treaties within the insurance industry, and in part related to the risks associated with this coverage. Coverage in excess of $3 million may send brokers/agents into excess markets and to Lloyd's. Conversely, while lower limits of coverage in amounts of $250,000.00 or $500,000.00 may be available, they are not typical according to our informants. Neither was this coverage considered appropriate to cover the types of risks adoption services providers face.

C. Assessment

In casting our nets as widely as possible given the time constraints which were made evident as this consultant was retained in late December 2004, we were mindful of the Department of State's need to complete this project and also of the delays which inevitably occur when the information necessary to complete the task is fragmented and available only through other sources who themselves have internal deadlines which affect their response time to an external request for information. While virtually all those who have been contacted provided some level of information that either ruled them in or out as informants, many of the key insurers were unable to provide us with the quantitative information we sought and had hoped to receive. With these explanations and caveats, we can state safely:

First, insurance coverage is generally purchased by the amount of 'limits' that are available to be purchased. The 'limits' of coverage typically define an amount of indemnity an insurance company will pay if a claim is made or litigation commences. To a certain extent, an ASP can only purchase what is available. To a certain extent, what an 'adequate' amount of insurance may be may be defined by the floor of what is available, as well as whether claims against ASPs are falling within a range that means an ASP will be 'protected' from liability by having that amount of insurance.

From the minimal claims and jury verdict information we obtained from brokers and agents and insurance companies, we tentatively suggest that an adequate amount of insurance may be coverage limits of $1 million per claim, $1 million in the aggregate. However, as stated, we have come to understand, based largely on anecdotal information which is without quantification, that $1mm/$3mm limits of coverage appear to be typical starting limits of coverage offered.

Second, ASPs and the Department of State are understandably concerned about the pricing of insurance and the impacts on ASP budgets. However, apparently there is no uniform pricing that applies in this market. Premiums for the same limits of insurance may range from a reported minimum of $1,500.00 per year according to coverage available from at least one broker that deals with "admitted insurers" to $65,000.00 and more per year as reported by at least one ASP who chose to provide public comment to the Department of State's September 15, 2003 proposed Rule.

There is no baseline of information which either has been obtained from insurers or agents and brokers or which is even available which provides a norm. Certain variables of pricing are described in this report.

Third, while some insurance coverage is available through so-called "admitted" or state regulated insurers, much of the insurance coverage for ASPs is available through the so-called "excess and surplus lines market" or "E & S" market. This market is largely an unregulated market with respect to price and the type of insurance coverage that may be made available.

Fourth, some information was provide as public comment which suggests that even one unsubstantiated claim against an ASP can lead to either termination of insurance coverage or a renewal of coverage which is so expensive that it is prohibitive. See public comments on the Department's website. All ASPs or interested parties had a clear opportunity to provide any information to the Department on insurance. In the Preamble of the Proposed Rule, the Department specifically solicited comments on insurance standards and asked for input from insurance experts and companies, actuaries, and ASPs, etc. See Appendix III.

Fifth, diligent efforts were made to obtain claims information from insurers. Claims information may serve as a surrogate for what might constitute 'adequate' professional liability insurance. Insurance company information involving claims and underwriting guidelines are considered proprietary. The claims information that might be pertinent to the Department of State's proposed rule is simply not available publicly. Consequently, any information that has been shared with us is subject to confidentiality and protection and should not be disseminated. Claims information is discussed below.

Finally, we believe we have identified many of the key insurance companies or families of companies that provide insurance for ASPs. We have relied upon the best information about these companies and their products that we were able to obtain. We made our assessments, if not a recommendation ***per se***, accordingly.

II. Insurance Industry Background

A. The Nature Of Insurance And Information Sought

1. Insurance Markets Are Decentralized And Information Is Fragmented

Insurance markets for all types of insurance, regardless of the type sought, are highly decentralized. Information with respect to insurance is also highly decentralized and as many people within the industry have described it, information is fragmented.

There is no one source, such as a national clearinghouse, from which the information we have been seeking can be obtained. In part, this is because while there are national organizations which do collect and maintain a great deal of certain types of insurance related data, such as AM Best Company, and the Insurance Services Office ("ISO"), these are private companies which cater to insurance and financial industry requirements.

For example, A.M. Best Company collects and disseminates certain types of market information for a price to its subscribers. A.M. Best Company also provides ratings on the solvency and strength of insurance companies. A.M. Best's ratings are widely recognized and relied upon in the industry in much the same manner as Standard & Poor's or Value Line ratings are reviewed and relied upon by those seeking information about stocks and the stock market.

In the case of ISO, insurance company members and other subscriber organizations determine in part what information will be gathered and released publicly, unless certain information is required to be released by State regulators. For example, one of ISO's many key functions which it provides to its insurer subscribers is to provide uniform insurance policy forms for certain types of business and/or policies. For example, ISO might issue a standard comprehensive general liability "CGL" form to its subscribers, who then use that form as the basic form for thousands of policies. Modifications may then be made for individual policy holders in the form of policy riders and exclusions.

Both of these companies were contacted for information. Through informal channels and research, certain information and lists that AM Best publishes were obtained.

A preliminary ISO informant, however, indicated that the type of claims information that was being sought was not collected, and in any event, it was unlikely to be available at the ASP level of information. It was reported that much information is aggregated by "class" of business, or by book of business. Some insurers and brokers indicated that the adoption services information was aggregated with larger classes of policyholders such as social services agencies generally.

2. Certain Insurance Is Highly Regulated By States While Adoption Insurance Is Not Generally So Regulated

Certain types of insurance, such as Homeowner's insurance ("HO") or automobile insurance with which most consumers are familiar, and health insurance and life insurance which are also purchased by many consumers, are regulated by States, although in varying degrees.[1] Regulation is a factor that helps determine, in part, the amount and type of information that is available with respect to insurance company rates/pricing, and insurance company losses.

In order for insurers to do business or to "write" insurance in any given State, they must typically meet a variety of statutorily determined capitalization and financial criteria. They must register with the each state's Secretary of State/Office of Insurance Commissioner and provide financial or other information annually like any corporation. Beyond that, each State establishes regulatory policies (and process) that govern the types of insurance that may be sold and the type of information each insurer must report to the State. Depending upon each State's statutes and the strength of the regulatory process, the individual States may vary greatly with respect to how much information about an insurer and an insurer's business is available.

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[1] The States vary in the degree of regulation to which they subject insurers. Minimally, all States have laws requiring that insurers meet certain capitalization and financial requirements in order to write insurance or to do business in their states. There are reporting requirements similar to those of any corporation. Certain types of insurance are highly regulated. For example, automobile insurance is highly regulated because of the number of consumers who drive, and because of the "public good" issues that, it can be argued, are triggered by or intertwined with liability issues. States have an interest in what happens on their roads as a matter of public policy because of the hundreds of million of dollars in property damage and injuries which result from auto collisions each year. While it certainly may be argued that States have an interest in what happens in commercial markets as well, there is simply less of a practice of intervention or regulation unless crises occur because of situational and/or other market issues. An example of this might be the intervention that occurred in the airline industry following 9/11. There was concern in financial sectors that without government intervention, insurers as well as the airlines whose planes were destroyed would be faced with extraordinary liability demands by families who lost other family members which the insurers and airlines might not be able to meet. The point here is that this is a highly complex industry.

In the HO and automobile markets, for example, those insurers that are authorized or “admitted” to the State to conduct that type of business, are likely to have their policy terms and the rates or the prices they charge to consumers for their products, or other information regarding such insurance, subject to review and approval by the Office of the Commissioner of Insurance, or dictated by Statute. The review may be cursory, or in depth, again depending upon the State.

Even though rates/pricing for the most widely used types of insurance (again auto and HO) may be regulated, the rates or prices which may be charged can vary enormously from market to market (however it may be defined) or from State to State, depending upon a host of factors, including the number of other insurers who are writing the same types of insurance in a given market or State, the experience or history of the risk, or “exposure” rates, the losses that have been sustained or might be sustained, and how a given company’s underwriters view the safety or desirability of a risk. Insurance is about risk. Each insurer may determine what risks it wishes to underwrite and in which States. For insurance purposes, a “market” may also be described by the type of insurance being written, or by a type of “class of business.” A market may cross State lines. A market may be comprised of a “risk pool” such as Adoption Services providers, or steam welders, or doctors or lawyers. In other words, if a “market,” however it is defined, is considered profitable and the potential for insurance losses is not considered extraordinarily high, and a number of insurers are writing the business in the same market, rates or prices may be competitive.

An example of how this might work is reflected in the recent situation with HO insurance in Florida. Several parts of Florida were hit very hard several times in succession during the 2004 hurricane season. Many insurers who wrote HO insurance in Florida undoubtedly began to weigh the profitability of continuing to provide that type of insurance in Florida given the recent losses and the prospects of bad hurricane seasons to come. If too many insurers were to stop providing insurance, or the cost of insurance were to become unpalatably high or unaffordable to many Floridians, the State of Florida would undoubtedly be pressed by homeowners “as a matter of public policy” to either provide HO insurance through a State funded system (usually what are called “State Guarantee” Funds or high risk pools) or Florida would find a way to provide incentives to induce insurers to continue to write insurance in a state where losses from hurricanes are likely to continue.

3. Certain Insurance Is Not Typically Highly Regulated

In addition to the life, health insurance automobile and HO insurance with which most consumers are familiar, there is also a highly complicated market which offers different types of commercial insurance which may cover everything from the slips and falls that might occur on one’s business premises (usually General Liability insurance); to EPL or employment coverage for those employers who wish to protect themselves from everything from employee fraud to discrimination; to Officers and Directors Liability insurance (typically purchased for Boards of Directors and Officers); to the type of insurance at issue here: professional liability insurance.

An ASP is likely to have a “coverage plan” which includes a variety of types of insurance. This might include all of the types identified above, but most especially for these purposes, professional liability insurance. This is sometimes referred interchangeably as “Errors or Omissions” (“E&O”) insurance. Professional liability insurance provides coverage for the negligence of those in a professional organization, whether for the negligence that results from something someone has done, or for something they failed to do. Professional liability coverage may be provided for an organization as a whole, or separate policies may also be purchased individually by the professionals within an organization.

As indicated previously, CGL policies typically cover property damage, personal injury, slander and libel, and advertising injury for injuries to third parties, the routine “slips and falls” which occur on a business premises, or claims made by third parties. These are typically “occurrence” based policies. Depending upon the insurer and the products offered, professional liability insurance coverage may be included within the limits of coverage of a comprehensive general liability insurance policy.

Directors and Officers liability insurance or D&O insurance offers ASPs' directors and officers and board members protection from personal liability for decisions made in their capacity as officers and directors or board members. Many policies will indemnify the directors and officers and board members, or they may provide the named insured with reimbursement once claims against officers and directors or board members have been paid out of pocket. There are also extension riders and policy endorsements that may be purchased to include officers of unaffiliated or affiliated companies.

Professional liability policies, as indicated, typically cover the professional negligence of the individual employees, such as clinical social workers of an ASP as well as the agency itself. However, these policies do not typically cover criminal acts.[2] Each of the insurers or brokers who provided information and who have been explicitly asked have stated categorically that criminal and, depending upon how defined, certain intentional acts are not covered.

In a plan of insurance which may cover many ASPs, it is the professional liability insurance, or that portion of a CGL policy if it encompass professional liability, which comes into play most frequently when claims are made or lawsuits are filed by parents of adopted children who assert claims with respect to the adoption process or those who handled it.

4. ASP Professional Liability Insurance Is Likely To Be Offered In the "Surplus Lines" Market

There are "surplus lines" insurance companies that provide coverage for high risk or otherwise difficult to place insurance for certain industries, or for specific risk classes such as adoptions. (A common example here might be insurance provided for an opera singer's voice.

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[2] Professional liability policies at one time were associated primarily with doctors and lawyers and then later, with accountants. The market for this type of insurance is enormous. E&O insurance is offered to cover insurance agents and brokers, cosmetologists, hair dressers, cattle ranchers, opera singers, in sum, virtually any job classification where there is a risk of being sued or the risk of exposure to a loss. E&O or professional liability policies are, according to industry sources, routinely written on a "claims made" basis.

This might be "specialty" insurance available from only one or two sources). Alternatively, some carriers will offer coverage through "riders" or "endorsements" on policies, for which an insured often pays additional premium.

As a starting point, information was requested from 48 of the State Insurance Commissioner Offices with respect to the information they had on file for the provision and regulation of professional liability insurance. From a survey of the states, we learned that more than three-quarters of the states had little or no information reported with respect to the professional liability form of insurance. At least 15 of the states explained they possibly had some information available, but with at least half of those information was either only available by coming into their offices to review files or they had information listed by insurer if they were admitted insurers. In other words, we had to know which insurers wrote business in that state's "admitted" or regulated market, and then, possibly, certain information was available. Virtually all of the information received lead to a conclusion that, in all likelihood, more than 70% of the professional liability insurance for ASPs is written in the excess/surplus lines market. In other words, policies may be underwritten at the rate the market may bear.[3]

Insurers who write in the excess/surplus market are not always "authorized" by the States; that is they are not always "admitted" to the states to write insurance. Many surplus line carriers are eligible to sell their insurance to regulated brokers in a given state and only if the

[3] Excluded completely from the scope of this review are the so-called "Charitable Immunity" statutes that operate in some form, with limiting degrees of protection, and/ or tort liability caps in some 43 States and the District of Columbia. Typically, these statutes only protect certain statutorily defined non-profit agencies' volunteers, and in often narrowly tailored circumstances, nonprofit organizations. Additionally, Congress enacted in 1997 the Volunteer Protection Act, codified at 42 U.S.C. S. § 14501, which covers only *volunteers* and which preempts State laws to the extent they are inconsistent with the Federal statute. However, because of the somewhat inconsistent protections afforded by these laws, they may be useful as a defense to an adoption agency, depending upon State statute, but not always helpful with respect to the scope of liability protection they afford. They do not generally cover fraud and intentional acts. They obviously do not cover for profit adoption agencies. They are a tool to be explored by agencies on a State by State basis.

insurers meet certain financial/revenue standards set statutorily by the given State. However, beyond an insurer's eligibility to offer insurance, the insurance pricing and the amount of coverage offered to ASPs in the excess/surplus lines market is largely unregulated. Consequently, pricing depends upon how many insurers are offering to insure adoptions as well as the criteria they use to determine price. These factors can be highly variable from insurer to insurer.

5. Insurance Pricing, Or the Underwriting Of Insurance

Most insurers guard the methods they use for pricing their insurance, or their underwriting criteria. That information, as well as the prices insurers typically charge and often their loss or claims data as well, are considered proprietary within the industry. Many companies will not disclose such data to the public unless required to do so by regulators. Underwriting guidelines and prices for insurance may vary widely by insurer depending upon their size, their experience in providing insurance within a given market segment, and their competitiveness within a certain market segment, among other factors.

Part of the reason for this is the competitive nature of certain types of insurance. Part of the reason is also that some $85 billion in insurance premiums generally, including insurance for many ASPs, reportedly is written in the E & S market in which insurers largely determine their own prices and coverage requirements and terms. Profit margins are not often disclosed.

Additionally, the rating of risks or the price an insurer may charge for an insurance product to a particular client is considered a combination of art and science. The more experience an insurer has in a product market, the more actuarial date that are developed on how profitable that line of business is and the more information is developed on what information is necessary to evaluate the risk.

In certain product markets, such as the automobile insurance market, insurers have vast quantities and years of actuarial and other data that quantify, for example, who has the most accidents, average costs of accidents, which drivers tend to have worse driving records by gender and by age, and other such information. The more and better the information about "exposures," the better an insurer is able to price insurance and to build in profitability knowing the likelihood of the risks being undertaken. Of course, catastrophes can throw this certainty off and create enormous losses for an insurer.

In the arena that comprises the ASP insurance market, brokers, agents, and even insurers have generally offered a perception that the market and the risks are highly uncertain. This perceived uncertainty affects availability and pricing of insurance for ASPs. In sum, few insurers are willing, currently, to write this insurance. Those who do, such as AIG/Lexington or United National, or even the Child Welfare Insurance Program, have been writing insurance in this market for many years. They know the risks and they price according to their own criteria and experience with the claims losses and the agencies they insure.

a. Information On Pricing

At least ten or more of the informants contacted verified the difficulties for social services/adoption agencies in purchasing professional liability insurance. It is a highly specialized market and generally, a high risk market in which the insurers need to price sufficiently to cover their risks. In order to underwrite or price insurance, each insurer determines the factors it will use in order to assess the risk of insuring a given agency and its staff.

For example, all of the brokers/insurers contacted who discussed underwriting standards generally suggested that insurers typically consider the following types of information in their pricing:

- Claims history of an agency
- An agency's experience in the field and length of history in the industry

- The extent of risk management in place in an agency
- Staff qualifications and the extent of continuing education undertaken
- The matrix of services provided by a given agency
- Premises safety and security features
- Financial stability of a service provider
- Exposure rates and/or number of adoptions

Only one of the insurance companies provided us with an explanation of how the variables they use for pricing are weighted, but we were asked not to disseminate the information publicly.

b. Other Factors Influencing Pricing

Another issue mentioned was the geographic origin of adoptions. None of the four insurers or the brokers/agents or wholesalers who discussed underwriting issues explicitly, generally, suggested that they varied pricing based upon geographic area of the world. However, three of the four thought that country of origin for the adoption could pose a problem.

At least one broker/agent categorically stated that the insurer its agency represented would not currently write insurance for adoptions for countries felt to be problematic, such as adoptions involving Russia or certain South American countries. This same broker/agent indicated that base pricing covers up to ten (10) adoptions, with premium that changes according to the number of adoptions as they increase in certain increments.

Other insurer representatives indicated that they watch conditions in the world and make decisions accordingly on a case by case and, then, on an agency by agency basis. Uniformly, Eastern European country adoptions were considered more problematic because of the numbers of claims originating from adoptions that involve children from these countries.

Consequently, the very lack of certainty in the world in which the ASPs conduct their business affects the pricing of their insurance and explains in part why costs are so high.

Another reason, which was not explored at length, is that the adoption services nonprofit sector generally is a relatively small one and losses are not being spread across a large enough market pool.

The list of variables provided above is clearly not an exhaustive list of variables that influence insurance underwriting. How the various factors are weighted and structured to determine price by any given insurance company is rarely disclosed. We do know that at least three of the large insurers have rate structures, which they use as base rates. They then vary those rates depending upon individual agency factors and the number of adoptions performed per year by the agencies they insure, together with other factors.

B. How Insurance Coverage Is Structured

1. Defense Costs And Limits Of Liability

Section 203(E) of the IAA provides: "The agency [ASPs] [sic] agrees to have in force adequate liability insurance for professional negligence and any other insurance that the Secretary considers appropriate."

As has been explained, the limits of coverage of any insurance, including professional liability insurance, and the costs of that coverage are to a large extent determined by what the potential exposure to liability may be and the cost of that liability.

a. Verdict / Settlement Information

One measure that insurers often use for determining the cost of potential coverage is claims loss and litigation data they collect for their books of business. Social services agencies and those that perform adoptions face a variety of challenges, which may result in claims and litigation.

Claims information from certain insurers was requested formally or informally. Only one claims management agency representing an insurer provided claims history information from their database. This information included seven years of "loss runs" or claims and lawsuits filed against that company's policy holders, describing the types of claims made against ASPs and the dollar amounts for which they settled. Key information also includes the expenses the insurers incurred for defending the claims. The claims in the loss run data range from complaints arising from an ASP's alleged failures to disclose medical or other pertinent medical/developmental history of a child to failures in the adoption process itself leading to a termination of the adoption process.

In addition to claims information, an exhaustive search of published case law opinions for damages awards also was conducted. See Appendix IV.

In the so called "wrongful adoption" cases which have been reported publicly in legal reporters and journals since 1986, jury verdicts have ranged from $12,720.00 to upwards of sustained jury awards of $1.5 million. Three of the reported verdicts exceeded $1 million dollars. An additional four (4) verdicts ranged in the $250,000.00 to $310,000.00 range. One verdict, which was not sustained on appeal because of the sovereign immunity cap on damages in that State, was $3.2 million. Included within the reported damages are different types of damages such as: economic costs of caring for a child, medical and special school expenses, damages for emotional distress to the parents, and damages as compensation for pain and suffering. See Appendix IV hereto.

From the seven years of loss runs we received from one insurer, claims paid out ranged from as little as $1,999.00 to in excess of $660,000.00. Several of the claims also fell between the $200,000.00 and $300,000.00 range.

One of the issues ASPs face in purchasing insurance is whether defense costs are contained within the policy limits purchased. A limit, as has been explained previously, is the maximum amount of money a policy will pay out. If a policy has a limit of $250,000.00 and defense costs for defending an insured such as ASP are not included in the limit, an insured may face the cost of paying for defense costs as an additional cost of insurance. If defense costs are included within policy limits, defense costs can be so high in relation to the dollars for paying the damages or indemnity portion of the claim, that the defense costs may heavily influence pricing to ensure that the defense costs are adequately covered.

An example using a basic consumer's automobile policy might provide an illustration. Some states, for example, require that each automobile owner purchase a minimum amount of collision insurance, hypothetically, $50,000.00. In the event that an auto owner had an accident and is responsible for hurting another person(s), her policy would pay out a maximum of $50,000.00 for that single accident/occurrence, no matter how many people were hurt. The limit might be purchased as a $10,000.00 per person / $50,000.00 in the aggregate. Accordingly, if ten (10) people are injured in our hypothetical accident, only $5,000.00 would be available theoretically for each person under the limits purchased, for a total of $50,000.00. (The amounts awarded to each person could also vary by extent of injury and might not be spread equally). In a highly competitive automobile market, insurers might offer different prices in premium for that $50,000.00 in coverage. Similarly, insurers may offer pricing discounts in different circumstances such as when more than one family member purchases auto policies from the same insurer. There are many variations on this theme.

If an automobile owner wishes to purchase additional insurance for a "limit" or maximum coverage of, hypothetically $100,000.00 / $300,000.00, and can afford such coverage, an insurer may, hypothetically, price the insurance in certain dollar increments of coverage. How an insurer prices insurance, again, may vary by market, regulation and insurer. In this case, by purchasing limits of $100,000.00 per person/occurrence (if an occurrence policy), or $300,000.00 in the aggregate, obviously much more protection is offered.

b. Typical Coverage Information

In the course of speaking with agents and brokers and other insurance company representatives, it has been represented frequently that perhaps as much as 75% if not more of the insurance available to ASPs is offered typically as $1million per claim/occurrence and $3 million for an annual aggregate, or for limits which are written as $1,000,000.00/$3,000,000. These are called double limits. Single, aggregate limits may also be available.

Information also has been offered that 75% or more of the policies offered by insurers in this market include defense costs within the limits. This is a figure that is mentioned as an estimate although we have no data that bear this out. Presumably, the major brokers know their market.

However, one of the insurance company representatives who provided information also reports that the company represented offers an “occurrence” policy with unlimited defense outside the limits of liability. This agent only places insurance through admitted carriers and does not use surplus lines carriers.

Any pricing of insurance coverage typically includes an estimate of what an insurer concludes claims, if brought, would cost in defense. From the loss runs provided by one insurer, the costs of defending its insured ASPs’ claims from a seven (7) year, apparently closed period, cost between one half and 2/3 of the amounts actually paid in indemnity.

2. Claims Made Versus Occurrence’ Policies

A second issue with which adoption agencies must deal is that of the availability of claims made versus occurrence policies. Many professional liability policies are written on a claims made basis. It has been reported fairly consistently that an estimated 75% or more of the professional liability policies written are claims made. Claims made policies provide coverage to a named insured on the policy only for the detrimental acts committed within and reported within that period of coverage. The negligent act, error, or omission that gives rise to the claim must be reported to the insurer during the policy period, and typically the claim must occur after a “prior acts” or “retroactive” date that is set forth in the policy declarations. Additional insurance may be purchased as extended reporting period coverage to add additional time to the policy coverage during which claims under that policy may be covered.

Most of the insurers who responded, and most of the brokers who were asked, explicitly stated that all insurers offer extended reporting coverage or ERP. This coverage is also sometimes called “long-tail” reporting coverage. This type of coverage gives the policy holder a measure of security that if a claim is made against it after the policy year has ended for negligence committed during that policy year, the policy will cover it. Insurers offer extended reporting period coverage for claims made professional liability policies from six (6) months to a longer period of time, depending upon insurer, underwriting guidelines, and the market being covered (e.g. lawyers, doctor malpractice, etc.). No one with whom we spoke suggested that more than three years of extended reporting coverage is available in the industry. Most insurers, according to our informants, typically offer one year of ERP.

Extended reporting period coverage can be very expensive. Two of the insurers with whom we spoke suggested ERP can cost as much as 200% of the base, policy year premium. Two of the insurers offered standard pricing for ERP coverage. One of these said that the ERP increases by 50% for each year of extended reporting sought, up to three (3) years, or a maximum of 150% above the base year premium price. Almost every agent/broker with whom we spoke suggested that no social services agency should purchase professional liability coverage without purchasing at least one year of extended reporting coverage.

In contrast to claims made policies, under an occurrence policy, the policy in force on the date of the event causing the loss provides defense and indemnity coverage. In other words, an occurrence policy’s trigger is tied to the date of an event or accident giving rise to a claim. It is possible that the event giving rise to the damages may not be reported or discovered during the same year in which it is reported. In some instances a "claim" may not be made for many years, depending upon a given state's statute of limitations and discovery rules.

Both claims made and occurrence policies have lead to hotly contested, multi-billion dollar litigation disputes between carriers and their policy holders with respect to what is called 'the trigger' of coverage, that is the period when the documented injury/damage took place and/or were reported, so as to require an insurer to defend and pay the indemnity.

For ASPs, the typical problem of a claims made policy versus an occurrence policy, and a potential trigger-of-coverage issue is illustrated in the following, hypothetical example:

> Adoption Agency Good Samaritan has purchased claims made insurance for years x + 8 (i.e. for 9 years). However, Adoption Agency Good Samaritan has no insurance in force in year 10. Adoption Agency Good Samaritan provides services to a family in the year x. Ten years later, that is in year x + 9 or year 10, the family discovers that the child they adopted from Adoption Agency Good Samaritan has serious medical problems which were either not disclosed, or not disclosed completely by Adoption Agency Good Samaritan. Hypothetically Adoption Agency Good Samaritan may have breached a standard of care in the State in which Good Samaritan operates. Even if Adoption Agency Good Samaritan has insurance in force for years 1-9, but none in year 10, not only will Adoption Agency Good Samaritan not have coverage in the year the claim was made and reported, i.e., year 10, but also, it may not be provided defense or indemnity coverage for year years 1-9, even if the child's injuries, as well as possibly the damages, after investigation, may be attributable to one of those years. And the reason there is no coverage? Because the reporting did not occur until year 10 and there was no coverage in force in the year in which the claim was made, thereby eliminating even possible coverage from a previous policy.

This is a very simple example. There are variations on this theme. The outcome changes if Adoption Agency Good Samaritan has been able to purchase occurrence policies even though the conditions of the hypothetical example are the same:

> Adoption Agency Good Samaritan may be protected by 9 years of occurrence policies, that is x +8, but not in year 10 because it purchased no insurance to cover that year. If the family who adopted a child from Good Samaritan makes a claim in year 10, and the family can prove the child's injuries/ damages occurred in each of the previous nine years, policies for years 1-9 may be 'triggered' for some

or all amount of the damages up to the limits of each policy in force for years 1-9, even though Adoption Agency Good Samaritan cannot claim coverage in year 10 because it had no policy in force that year. Alternatively, damages may be apportioned to different policy years depending upon the amount/size of the damages and when the injury giving rise to the damages occurred or manifest.

From these examples, it should be clear that few insurers wish to be exposed to so many years of possible claims that could be made against a policy that may long since have lapsed. Consequently, claims made policies ensure that an insurer's risks are time-limited.

III. Strategy and Methodology

A. The Task Of Identifying And Locating Information Involved A Multi-Pronged Approach

In order to complete this task successfully, we attempted to identify: (1) which insurance carriers currently write professional liability insurance for ASPs and in which states; (2) how the insurance companies are pricing their insurance (i.e. which factors they include as criteria for determining the risk, and hence the pricing); and (3) whether claims data and other information are available which would provide a bench mark for the amount of insurance which may be necessary for purposes of a recommendation by the Department of State.

The primary receiving states for intercountry adoptions according to the National Adoption Information Clearinghouse ("NAIC") are: California, New York, Texas, Florida and Illinois. In one survey of information also published by the NAIC, Pennsylvania and Michigan also seem to rank high statistically as states whose residents adopt children through intercountry adoption.

Consequently, we attempted to identify brokers and agents or wholesalers who actually place this type of insurance with different companies.

1. Insurers: The Primary Source of Information

As a starting point, the Department of State was provided with the names of two (2) insurance companies who reportedly write a significant amount of business for adoption services providers to send letters soliciting information. One of these companies, AIG/Lexington, is acknowledged as a market leader in writing professional liability insurance coverage by virtually every knowledgeable industry member, whether broker, agent, insurance company employee, or trade association staff member.

AIG is an insurance company that has led its industry in the Property/Casualty insurance field. AIG began operations in international markets in the early 20th century. AIG has long experience in dealing with international markets, and consequently, it is widely respected as a knowledgeable company about the risks of insuring in foreign markets, or of insuring where there is interaction with foreign markets.

AIG is also important because at least one of its member companies, Lexington Insurance, by extrapolation and reports, is estimated by various informants to write as much as 40% if not more of the surplus lines market professional liability insurance available to ASPs. AIG was one of several insurers that was sent a Letter of Introduction, see Appendix V hereto. (Deletion of confidential business information).

In addition to AIG, we have made contact of some type, either cursorily or more formally, with the following insurers: Philadelphia Insurance; Lexington Insurance (AIG Member Company); Granite State Insurance (AIG Member Company); American Home Assurance (AIG Member Company); National Union Fire Insurance Company of Pittsburgh (AIG Member Company); CNA Insurance; American Casualty Co. of Reading (CNA Member Company); Chicago Insurance; Evanston Insurance (agency based only); Western World Companies, Tudor Insurance (Western World Member Company) through Child Welfare Insurance Program, AON Insurance, James River Specialty, and United National Insurance (United National Group Member), to name a few. Attached hereto is a list of some 25 surplus lines insurance companies which we either contacted or which were part of our originally identified list as possibly providing professional liability insurance to the ASP market. The insurers whose representatives we contacted, either formally by letter, or informally, eventually helped us identify the ten or so companies that potentially write 70% (by informal estimates) or more of the insurance on which we focused.

Another reported player in the excess and surplus market is Lloyd's. Only recently, information was generally made available which suggests that Lloyd's syndicates may be a large source of insurance for ASPs whose insurance cannot be placed with American insurers. Since Lloyd's syndicates operate out of the London, England insurance market, and since insurance from Lloyds's syndicates may only be purchased in the United States through certain authorized brokers, contact was made with two of the largest insurance brokers in the world who either have Lloyd's brokers on staff, or relationships with Lloyd's brokers. These are Willis, headquartered in London and one of the worlds largest 'intermediaries' and risk managements firms, and Marsh and Mclennan Companies ("MMC"), which is also a premier risk management service and consulting firm. Contacts were made with the New York offices of both companies in an effort to seek their assistance with Lloyd's syndicate information. We were unsuccessful in obtaining information hoped for as of the date of this report.

2. State Offices Of Insurance Commissioners

Insurance, as has been indicated previously, is regulated by the States, with certain noteworthy exceptions with respect to this project. Consequently, a second logical source of information was the State offices that regulate insurance, or the Offices of the Insurance Commissioners for each State. It became evident shortly after the Offices of the Insurance Commissioners began responding to inquiries as part of this project that the excess/surplus lines market, that is the unregulated market, appears to be the primary source for professional liability insurance for adoption services providers.

This important piece of information resulted from our contacting in early February the Insurance Commissioner Offices of 48 States on the rates and filings available for E&O insurance governing the adoption market. Rate and filing information with regard to professional liability insurance is not typically available in at least 2/3 of the States from the information gleaned, unless there is an identification of an admitted insurer writing insurance in that state for whom such information then may or may not be available at the level of detail being sought.

We received some type of response from 25 of the States (even if just an acknowledgment) and we followed up with others   Accessibility of the information even if there is information available is a factor as well. At least five (5) State insurance offices informed us that information they have on file could be reviewed only by appointment in their offices.

3. Trade Associations For Agents and Brokers

We contacted more than 40 agents and brokers or wholesalers country wide in order to identify and locate those who specifically serve as agents for companies or who broker or place professional liability insurance. We narrowed our contacts from this list. Please see Appendix I. There are thousands of agents and brokers and wholesalers. Clearly, we may not have reached all of the major brokers/agents or wholesalers who place the insurance coverage on which we are focused and with whom it would have been beneficial to make contact.

Additionally, two of the largest Trade Associations representing the agents and brokers who write professional liability insurance were approached for their assistance. One of these is NAPSLO in Kansas City, Kansas, which represents brokers and small surplus lines companies who write professional liability insurance. (Deletion of confidential business information). The second of the two Trade Associations is the Council of Insurance Agents and Brokers, in Washington, D.C. CIAB represents some of the largest insurance brokers in the business.

(Deletion of confidential business information). Both of these contacts yielded some helpful information.

4. Other Market Information Providers

Industry publications provided another source of information for this project. Two of the major information providers were identified above as AM Best Company (New Jersey and London), which is reputedly the largest single source of information on the insurance industry. Among other services, AM Best publishes a highly influential newspaper for the trade that reports on any type of information imaginable of interest to the industry. As previously indicated, AM Best Company publishes a rating index of insurance companies which rates them, among other factors, for their financial strength within their industry. A.M. Best also gathers and publishes data on market trends, rate data insurance company losses and other such information. A.M. Best publishes standard underwriting manuals widely used in the industry. While AM Best was contacted for assistance, their assistance has been provided indirectly through reports they have published. Some of that information has been used in this report.

A second source from which we sought information is ISO, the Insurance Services Office (New Jersey). ISO describes itself as a "leading source of information about risk." ISO maintains statistical, actuarial and claims information for certain parts of the insurance industry, as well as insurance policy standard language, analytic modeling programs for dealing with risk to the industry. ISO did not maintain the type of information that was sought.

5. Information On Insurance Company Losses, Claims Information, and Published Verdict/Settlement Information

In order to recommend an "adequate" amount of coverage for professional negligence, there must be a basis for explaining how that amount has been derived.

As has been explained above, claims and settlement or verdict information serve as benchmarks, or a substitute measure, for the amount of insurance that may be necessary for ASPs. This information is generally available from three sources:

(1) Claims data from insurers who currently sell insurance to social services/adoption agencies and/or who have sold to adoption agencies against whom claims have been made or lawsuits filed under a myriad of “Wrongful Adoption” theories, such as failure to disclose pertinent medical and developmental information on the adoptive child, failure to prepare the adoption parents adequately, failure to successfully complete adoptions for any number of reasons, and fraud and intentional misrepresentation (depending upon the state);

(2) Settlement/verdict evidence from lawsuits filed against adoption agencies which may be published by litigation case verdict and settlement reporting services, such as: BNA, The National Law Journal, and Mealey Publications. Much of this information is ‘self-reporting,’ that is those who wish their accomplishments known report verdicts, and settlements if agreements permit; and

(3) Verdict and damages information which may be published in state and regional reporters which report legal case opinions issued by courts country wide.

a. Insurance Company Claims/Loss Information

Many of the major insurers who were identified to us were contacted in our efforts to obtain claims data. Only one insurer and one management company that serves as a claims manager for an insurer, provided any quantifiable data with respect to claims, in part because claims information considered to be proprietary.

Claims/loss data from insurance companies are important because these data are arguably the best measure for determining the dollar size of the actual or incurred liabilities that have affected adoption service providers, and therefore these data influence pricing based upon claims history or experience in the ASP market. An insurer’s claims and loss run information will include claims that never materialized as legitimate, payable claims, as well as those claims that resulted in law suits but which may be settled before trial is reached. When an insurance company has years of experience with a book of business, it is prepared by the experience of history to anticipate what it might expect to pay for certain types of claims, such as abuse or molestation claim, or an adoption in which the medical problems of a child were not disclosed. We had hoped to obtain much more of this type of information in order to support our assessment and to reach a recommendation.

b. Verdict and Settlement Reporters

Claims and loss information using trial awards and law suit settlements as a proxy or substitute for insurers' claims information, is sometimes collected and used as a basis for understanding market costs.

Certain privately run publications, such as BNA and Mealey's, have staffs who gather information from law firms and courts with respect to certain highly monitored areas of law which also often have very substantial cross-national industry and/or economic impacts, such as: toxic torts, insurance, asbestos, class action products liability, or employment related verdicts and settlements. Most reporting services do not have the staff and resources to collect data on topical areas of less scope and economic significance. There are simply too many lawsuits filed each year countrywide. Even within those areas of legal significance that are regularly reviewed and reported by reporting services, many of the reports come from "self-selectors," i.e. those who wish to have their verdicts and settlements reported.

Similarly, Courts do not have the resources to collect systematically and then to maintain the types of statistics obtained and published by private reporting services.

An exhaustive search was made from available public sources. We have discovered however, that none of the reporting services that were contacted systematically collects such information about adoption services losses/claims and settlements.

In addition, a countrywide search through online research was conducted of reported legal case decisions. According to the search parameters that were used, more than 200 such cases have been reported for some aspect of their proceedings. However, fewer than 15 cases reported contained damages awards information. These cases have been described, generally, above, and are listed in Appendix IV.

Because we obtained limited, quantified information from insurers, agents and brokers it is not clear how representative the damages reported in legal case decisions may be in comparison with the overall, and clearly more comprehensive, claims data insurers maintain. Consequently, we do not know whether the damages awards reported in published case decisions are statistical "outliers" in that they are larger on average than most claims payments for similar types of claims, or whether they reflect on average the loss pay outs on typical claims of the same type within the classes of cases in which we were interested. We had hoped to obtain claims information to reach a more conclusive assessment of appropriate, adequate insurance requirements for ASPs.

IV. Summary

The importance to the Department of State in promulgating a regulation with respect to its insurance mandate is the backdrop against which information from all the identified sources was gathered, or attempted, as rapidly as possible.

Clearly, identifying the relevant insurers and brokers and agents or wholesalers in the industry was a crucial starting point. Conducting this search meant cutting a very wide swathe through the insurance industry. Regrettably, we were unable to contact every agent or broker or insurer who might have provided us with significant information. Substantive responses, even though justified by all the reasons provided, were much slower and often less comprehensive than we had hoped. However, everyone with whom we spoke or provided us information was helpful and we greatly appreciated the information we received from so many sources.

Since we believe we identified or attempted to obtain information from at least a majority of insurers who reportedly write much of the professional liability insurance for ASPs, and we sought information from as many sources as we were able to identify within the time constraints, we believe that the information contained in this report reflects a good faith effort which justifies the suggestions and explanations which will be made in the final regulation the Department of State issues.

APPENDICES

APPENDIX I

Partial List Of Insurance Agencies Through Whom Adoption Agency Professional Liability Insurance May Be Placed With Insurers And/Or Agencies Contacted For Information

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Agency Marketing Services, Inc.
Aggressive Insurance Brokers, Inc.
All Risks, Ltd.
Atlantic Specialty Line, Inc.
Black White & Associates
Bohrer, Croxdale & McAdoo, Inc.
Bolton & Co.
Continental/Marmorstein & Malone
Crump Insurance Services, Inc.
Delaware Valley Underwriting Agency, Inc.
ELM Insurance Brokers/Formerly Frederick John Fisher
Gateway Underwriters Agency
Health Insurance Brokers—Dallas
Holt & Company, Inc.
International Excess Agency
J.M. Wilson
Jacobs & Associates
Jimcor Agencies
Klinger Associates, Inc.
Lighthouse Underwriters, LLC
London American General Agency, Inc.
McSweeney Agency
Metcom Excess
Midlands Management Corporation
Midlands Management of Texas, Inc.
Midwestern General Agency, Inc.
National Insurance Professionals Corporation
Prime Insurance Syndicate, Inc.
Princeton Risk Managers, Inc.
Professional Liability Insurance Services, Inc.
R.E. Chaix & Associates
Richter-Robb Pacific Insurance Services, Inc.
Russell Bond & Co.
S.H. Smith & Co.
Southern Insurance Underwriters, inc.
Swett & Crawford
Tennant Risk Services, Inc.
United Brokers, Inc.

APPENDIX II

Partial List Of Surplus Lines Insurance Companies From Whom Information Has Been Sought Or Is Being Sought

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Ace INA Group
American International Group, Inc.
Arch Capitol Group
Argonaut Insurance Group
Berkshire Hathaway Insurance Group
CAN Insurance Company
Chubb Group of Insurance Companies
Colony Insurance Company
Colony National Insurance Company
Colony Specialty Insurance Company
Dwyer & Associates
Evanston Insurance Company
Everest Indemnity Insurance Co.
GE Global Insurance Group
Greater American P&C Insurance Group
Guilford Insurance Company
Hartford Insurance Group
HDH Group
HDI US Group
Hilb Rogal & Hobbs
James River Insurance Company
Lexington Insurance Company
Michigan Specialty Insurance Agency
National Indemnity Company of the South
Northland Casualty Co.
Northland Insurance Co.
Philadelphia Insurance Company
Royal & SunAlliance USA
Scottsdale Insurance Company
Scottsdale Surplus Lines Insurance
St. Paul Surplus Lines Insurance Co.
St. Paul Travelers Co.
TJ Adams Group
United National Group
US Underwriters Insurance Company
USF&G Specialty Insurance Co.
Western Heritage Insurance Company
Western World Insurance Co.
Western World Insurance Group
WR Berkeley Group
XL America Group
Zurich American Insurance Company of Illinois

APPENDIX III

Chart Of Public Comments To Proposed Rule With Respect To Professional Liability Insurance, Section 96.33(h)

Adoption Agencies that Currently Have Professional Liability Insurance, According to their Comments*

COMMENTER	AMOUNT OF INSURANCE OBTAINED
AAA Partners in Adoption, Inc.	(Amount not provided)
Across the World Adoptions	(Amount not provided)
Adoptions from the Heart	$1,000,000 per occurrence
Children's House International	$1,000,000 per occurrence
Chinese Children Adoption International	$1,000,000 per occurrence
Family Adoption Consultants	$100,000 per occurrence / $300,000 aggregate
Jewish Family Services of Greater Hartford	$1,000,000 per occurrence
Rainbow Adoptions International	(Amount not provided)
Spence-Chapin Services to Families and Children	$1,000,000 per occurrence
Uniting Families Foundation	$1,000,000 per occurrence / $3,000,000 aggregate

**Some of the above commenters note that they find it increasingly difficult and expensive to maintain their level of professional liability insurance.*

Adoption Agencies that have been Unable to Obtain Professional Liability Insurance, According to their Comments*

COMMENTER	REASON GIVEN WHY COMMENTER DOES NOT HAVE COVERAGE
Adoption Unlimited	Affordability
Adoptions & Aid International	Affordability
Americans Adopting Orphans	Unable to find coverage
Americans for African Adoptions	Unable to find coverage
Child Link International	Unable to find coverage
Families International Adoption Agency	Unable to find coverage
Family Connections Adoption	Unable to find coverage (Used to be insured, but coverage was dropped after one claim)
Hawaii International Child, Inc.	Affordability
International Children's Alliance	Affordability
International Concerns for Children	Affordability
International Family Services	Affordability

Karing Angels International Adoptions	Limited coverage available
Kentucky Adoption Services	Affordability
Lifeline Children's Services	Unable to find coverage; Affordability
Mississippi Children's Home Services	Unable to find coverage
Reaching Out Thru International Adoption	Unable to find coverage
Special Connections International	Limited coverage available
Thursday's Child	Affordability & Coverage availability
Welcome House of Pearl S. Buck International	Affordability & Coverage availability
West Sands Adoptions	Affordability
World Association for Children and Parents	Affordability

**Some of the above commenters do not explicitly state that they lack professional liability insurance. However, all of the above commenters emphasize that professional liability insurance is very difficult—if not impossible—to obtain.*

Insurance Agencies that Offer Professional Liability Insurance, According to Their Comments

Commenter	Amount of Insurance Offered
Allan D. Hirsh Agency, T&H Insurance Center	$1,000,000 per occurrence / $3,000,000 aggregate (Insuring Uniting Families Foundation)
Great Oak Insurance, Inc.	Amount not provided. Currently insures 5 international adoption agencies.

APPENDIX IV

Reported Jury Verdicts And Settlements

Case	Nature of Damages Awarded	Verdict
Borock v. International Adoption Center, Case No. 02-11-4-73, Verdict Date February 20, 2004	Travel expenses, reimbursement of contract costs	$12,720 (Intercountry Adoption)
Burr v. Board of County Commissioners of Stark County, 491 N.E.2d 1101 (Ohio 1986).[4]	Medical expenses, emotional damages, other expenses	$125,000 (Domestic Adoption)
Halper vs. Jewish Family & Children's Service, Case No. 01-02-2046, Verdict Date: March 3, 2004 (Unreported).	Medical expenses, lost income, extraordinary costs for care	$300,000 (Domestic Adoption)
Mohr vs. Commonwealth, 421 Mass. 147 (Mass. 1995).	Future medical expenses (plaintiffs waived damages for pain and suffering and past expenses)	$3.8 million (Court reduced judgment to $200,000 pursuant to Massachusetts Tort Claims Act). (Domestic Adoption)
Levi v. Johnson, Case No. GIE 005592, San Diego County Superior Court, Verdict Date: June 25, 2001 (Unreported).	Economic, noneconomic, punitive	$312,354
Diane and Kevin Hogan (Unreported, verdict cited in MATTHEW BENDER, 2-16 ADOPTION LAW AND PRACTICE § 16.05 n.4.)	Medical expenses	$336,000 (Domestic Adoption)
Aldrich v. Madden, Case No. 00-CV-0825, Saline County Circuit Court, Verdict Date 11/8/2001	Compensatory, punitive Malpractice, negligent hiring of attorney	$1,100,000 (Domestic Adoption)

4 With respect to the issue of sovereign immunity to shield a municipality's liability, this case was superceded by the Political Subdivision Tort Liability Act, Ohio Rev. Code Ann. § 2744, as explained in *Stillwell v. City of Xenia*, 2001 Ohio App. LEXIS 573 (Ohio Ct. App., 2001).

Case	Nature of Damages Sought	Settlement
Byrnes v. Children's Home Society of California, No. BC 207 751 [Los Angeles Co., Calif., Super. Ct.	Care expenses, emotional distress, punitive damages	$700,000 (Domestic Adoption)
Harrison v. Adoptions with Love, Case No. MICV 1996-06884, Middlesex County, MA.	Medical expenses, extraordinary costs for care	$300,000 (Domestic Adoption)
Forter v. County of San Mateo, MATTHEW BENDER, 2-16 ADOPTION LAW AND PRACTICE § 16.05 n.3.	Medical care, lost wages	$1.45 Million (Domestic Adoption)
Meracle v. Children's Service Society of Wisconsin, 149 Wis. 2d 19 (Wis. 1989).	Future, extraordinary medical expenses	$250,000 (Domestic Adoption)

Information on actual jury verdicts and settlements was culled from several sources. Specifically, searches were performed in Lexis-Nexis's "Combined Verdicts, Settlements, and expert Directories" database, which compiles over forty State and regional verdict and settlement reporters. Research also included searches through State and Federal case law, practice guides, law reviews and journals.

Generally speaking, the types of damages available in wrongful adoption cases include: compensatory damages, emotional distress damages, and punitive damages. Depending on the nature of the claim, compensatory damages may include costs of past and/or future medical expenses, care for the adopted child, and lost wages of either the parent or the adopted child. The availability of emotional distress damages in wrongful adoption cases depends on the nature of the underlying claim (e.g., fraud, negligence, etc.) and corresponding State law on damages for that type of claim. Punitive damages may be awarded in wrongful adoption cases by a jury or trier of fact where the plaintiff's claim indicates that the alleged injury resulted from some type of outrageous or morally culpable behavior took place (the exact standard varies by jurisdiction).

APPENDIX V

Department Of State Letters Of Introduction

February 8, 2005

Ms. Patricia Watson
Philadelphia Insurance Companies
One Bala Plaza
Bala Cynwyd, PA 19004

Dear Ms. Watson:

I understand that you have been contacted by Ms. Mary Joan McNamara. Let me please introduce Ms. McNamara and explain that she is serving as the Department's consultant. Thank you for taking the time to speak with her.

The Department is undertaking for the first time in history to regulate intercountry adoption service providers at the federal level under the Hague Convention on Intercountry Adoption--an international treaty, which the United States has ratified. The Hague Convention has implementing legislation—the Intercountry Adoption Act of 2000 (the IAA). The IAA sets minimum standards for adoption service providers. It also requires the Department to publish by regulation an appropriate type and amount of liability insurance an adoption service provider must carry to become accredited or approved to provide adoption services in Hague Convention intercountry adoption cases. The Department is in the process of preparing to promulgate its rule on standards for adoption service providers. A proposed rule was issued in the Federal Register on September 15, 2003 and is available for your review.

Because Congress has mandated in the IAA that the Department issue a rule requiring those adoption/social services agencies to purchase an "adequate" amount of insurance, the State Department is trying to obtain information from brokers and insurance companies that would enable it to craft a rule that makes sense given what is available to adoption service providers in the insurance market. The information would be used to help draft the rule and to justify the basis for selecting the type and amount of insurance that adoption service providers will be required to have.

We have asked your company to assist in this most important process because we understand that your company writes professional liability insurance, or Errors & Omissions policies, and other coverage for social services/adoption agencies.

We are seeking the following information on a countrywide basis:

1. Whether you provide professional liability or other insurance coverage to adoption service providers at all; and what claims/loss data (including settlements and verdicts) for adoption services providers can you provide and do you have that information by specific rate classification;

2. Alternatively, claims/loss data for social services agencies whose work involves international adoptions and against whom claims have been made involving negligence, fraud, or failure to disclose information to adoptive parents;

3. Pricing information per $10,000.00 limits of coverage (or by the standard by which you price in premium increments); what are the type coverage limits—$250,000, $500,00, $1,000,000, etc?

4. Whether your company's claims made policies include defense costs within the limits, and if they do not, pricing information for defense costs;

5. Whether your company offers extended reporting period coverage for such insurance, and if so the cost;

6. Whether your company offers occurrence based polices for professional liability insurance and if so, the differences in cost;

7. Identification of those states in which you write either on an admitted or non-admitted basis; whether you filed rates (and in which states) or whether you write this insurance as surplus lines;

8. Whether you vary your coverage/pricing depending upon the country of origin (for example, China, Romania, or otherwise) with which the social services/adoption agency arranges intercountry or international adoptions; whether you vary the coverage/pricing depending upon the number of adoption cases (possible range could be from 5 to 500 adoption cases per year) an adoption agency typically handles in a year;

9. What coverage you offer in the event of "intentional" acts, not typically included in E & O coverage's;

10. Whether there is a way to effectively use any type of surety bonding as part of overall coverage (for example, CGL, professional liability, directors and officers) in such a way to reduce costs for adoption agencies;

11. Whether you do or would offer discount pricing if agencies purchased through professional organizations so the losses could be spread across a pool;

12. Which factors you use as underwriting criteria;

13. What factors would cause you to not renew a policy for a social services/adoption agency; and

14. Is there a combination of products that you offer which would be cost effective to provide the coverage necessary and which the State Department should consider?

Because we are mindful of the proprietary nature of much of this information, we would be willing to work with your company in ensuring appropriate use of your company's information consistent with the Department's ability to make such information available during the public rulemaking process as necessary so that we can accomplish our objectives in this task.

We would also be willing to work with your company to provide you with review of the presentation of the data you provide to ensure that we are presenting it accurately.

Again, we greatly appreciate your willingness to speak with Ms. McNamara, and to present this request to your management. We hope you are able to work with us. Her contact information is as follows: Mary Joan McNamara; 1410 Hunting Wood Road; Annapolis, Maryland 21403; Telephone: 410-268-2820; Fax: 410-268-2827; Email: mjmcnlaw@comcast.net.

Sincerely,

Edward A. Betancourt
Director
Office of Policy Review and Interagency Liaison
Bureau of Consular Affairs

February 8, 2005

Ms. Melissa U. Messerve
Underwriting Director
Al Risk Specialists Insurance Inc.
100 Summer Street
Boston, MA 02110

Dear Ms. Messerve:

I understand that you have been contacted by Ms. Mary Joan McNamara. Let me please introduce Ms. McNamara and explain that she is serving as the Department's consultant. Thank you for taking the time to speak with her.

The Department is undertaking for the first time in history to regulate intercountry adoption service providers at the federal level under the Hague Convention on Intercountry Adoption--an international treaty, which the United States has ratified. The Hague Convention has implementing legislation—the Intercountry Adoption Act of 2000 (the IAA). The IAA sets minimum standards for adoption service providers. It also requires the Department to publish by regulation an appropriate type and amount of liability insurance an adoption service provider must carry to become accredited or approved to provide adoption services in Hague Convention intercountry adoption cases. The Department is in the process of preparing to promulgate its rule on standards for adoption service providers. A proposed rule was issued in the Federal Register on September 15, 2003 and is available for your review.

Because Congress has mandated in the IAA that the Department issue a rule requiring those adoption/social services agencies to purchase an "adequate" amount of insurance, the State Department is trying to obtain information from brokers and insurance companies that would enable it to craft a rule that makes sense given what is available to adoption service providers in the insurance market. The information would be used to help draft the rule and to justify the basis for selecting the type and amount of insurance that adoption service providers will be required to have.

We have asked your company to assist in this most important process because we understand that your company writes professional liability insurance, or Errors & Omissions policies, and other coverage for social services/adoption agencies.

We are seeking the following information on a countrywide basis:

1. Whether you provide professional liability or other insurance coverage to adoption service providers at all; and what claims/loss data (including settlements and verdicts) for adoption services providers can you provide and do you have that information by specific rate classification;

2. Alternatively, claims/loss data for social services agencies whose work involves international adoptions and against whom claims have been made involving negligence, fraud, or failure to disclose information to adoptive parents;

3. Pricing information per $10,000.00 limits of coverage (or by the standard by which you price in premium increments); what are the type coverage limits—$250,000, $500,00, $1,000,000, etc?

4. Whether your company's claims made policies include defense costs within the limits, and if they do not, pricing information for defense costs;

5. Whether your company offers extended reporting period coverage for such insurance, and if so the cost;

6. Whether your company offers occurrence based polices for professional liability insurance and if so, the differences in cost;

7. Identification of those states in which you write either on an admitted or non-admitted basis; whether you filed rates (and in which states) or whether you write this insurance as surplus lines;

8. Whether you vary your coverage/pricing depending upon the country of origin (for example, China, Romania, or otherwise) with which the social services/adoption agency arranges intercountry or international adoptions; whether you vary the coverage/pricing depending upon the number of adoption cases (possible range could be from 5 to 500 adoption cases per year) an adoption agency typically handles in a year;

9. What coverage you offer in the event of "intentional" acts, not typically included in E & O coverage's;

10. Whether there is a way to effectively use any type of surety bonding as part of overall coverage (for example, CGL, professional liability, directors and officers) in such a way to reduce costs for adoption agencies;

11. Whether you do or would offer discount pricing if agencies purchased through professional organizations so the losses could be spread across a pool;

12. Which factors you use as underwriting criteria;

13. What factors would cause you to not renew a policy for a social services/adoption agency; and

14. Is there a combination of products that you offer which would be cost effective to provide the coverage necessary and which the State Department should consider?

Because we are mindful of the proprietary nature of much of this information, we would be willing to work with your company in ensuring appropriate use of your company's information consistent with the Department's ability to make such information available during the public rulemaking process as necessary so that we can accomplish our objectives in this task.

We would also be willing to work with your company to provide you with review of the presentation of the data you provide to ensure that we are presenting it accurately.

Again, we greatly appreciate your willingness to speak with Ms. McNamara, and to present this request to your management. We hope you are able to work with us. Her contact information is as follows: Mary Joan McNamara; 1410 Hunting Wood Road; Annapolis, Maryland 21403; Telephone: 410-268-2820; Fax: 410-268-2827; Email: mjmcnlaw@comcast.net.

Sincerely,

Edward A. Betancourt
Director
Office of Policy Review and Interagency Liaison
Bureau of Consular Affairs

February 22, 2005

Mr. Richard Imbert
American Professional Agency, Inc.
95 Broadway
Amityville, NY 11701

Dear Mr. Imbert:

I understand that you have been contacted by Ms. Mary Joan McNamara. Let me please introduce Ms. McNamara and explain that she is serving as the Department's consultant. Thank you for taking the time to speak with her.

The Department is undertaking for the first time in history to regulate intercountry adoption service providers at the federal level under the Hague Convention on Intercountry Adoption--an international treaty, which the United States has ratified. The Hague Convention has implementing legislation—the Intercountry Adoption Act of 2000 (the IAA). The IAA sets minimum standards for adoption service providers. It also requires the Department to publish by regulation an appropriate type and amount of liability insurance an adoption service provider must carry to become accredited or approved to provide adoption services in Hague Convention intercountry adoption cases. The Department is in the process of preparing to promulgate its rule on standards for adoption service providers. A proposed rule was issued in the Federal Register on September 15, 2003 and is available for your review.

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5. Whether your company offers extended reporting period coverage for such insurance, and if so the cost;

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7. Identification of those states in which you write either on an admitted or non-admitted basis; whether you filed rates (and in which states) or whether you write this insurance as surplus lines;

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15. In which states do you write E&O/malpractice coverage; and

16. Do you offer this insurance as part of rate filings, or as surplus lines, or both?

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Sincerely,

Edward A. Betancourt
Director
Office of Policy Review and Interagency Liaison
Bureau of Consular Affairs

February 22, 2005

Mr. Rod Sargent
Vice President, Corporate Marketing
Argonaut Group
10101 Reunion Place Boulevard
San Antonio, Texas 78216

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